



DEPARTMENT OF INSURANCE

Commissioner: Roxani Gillespie

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Insurance is the only interstate business wholly regulated by the several states, rather than by the federal government. In California, this responsibility rests with the Department of Insurance (DOI), organized in 1868 and headed by the Insurance Commissioner. Insurance Codes sections 12919 through 12931 provide for the Commissioner's powers and duties. Authorization for the Insurance Department is found in section 12906 of the 800-page Insurance Code.

The Department's designated purpose is to regulate the insurance industry in order to protect policyholders. Such regulation includes the licensing of agents and brokers and the admission of insurers to sell in the state.

In California, the Insurance Commissioner licenses 1,300 insurance companies, which carry premiums of approximately \$26 billion annually. Of these, 650 specialize in writing life and/or accident and health policies.

In addition to its licensing function, the DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects over 120 different fees levied against insurance producers and companies.

The Department also performs the following functions:

- (1) regulates insurance companies for solvency by tri-annually auditing all domestic insurance companies and by selectively participating in the auditing of other companies licensed in California but organized in another state or foreign country;

- (2) grants or denies security permits and other types of formal authorizations to applying insurance and title companies;

- (3) reviews formally and approves or disapproves tens of thousands of insurance policies and related forms annually as required by statute, principally related to accident and health, workers' compensation and group life insurance;

- (4) establishes rates and rules for workers' compensation insurance;

- (5) regulates compliance with the general rating law. Rates generally are not set by the Department, but through open competition under the provisions of Insurance Code sections 1850 *et seq.*; and

- (6) becomes the receiver of an insur-

ance company in financial or other significant difficulties.

Through the California Insurance Code, the Commissioner has the power to order a carrier to stop doing business within the state, but does not have the power to force a carrier to pay a claim, a power reserved to the courts. The Commissioner may hold an administrative hearing to determine whether a particular broker or carrier is complying with state law.

The Commissioner is aided by a staff of over 400, located in San Diego, Sacramento, Los Angeles and San Francisco, the Department's headquarters. The Commissioner directs ten functional divisions and bureaus, including the recently reestablished Consumer Affairs Division. This division has been expanded and now includes the Rate Regulation Division. The Consumer Affairs Division is specifically designed to make the DOI accessible to consumers and more accountable to their needs and questions.

The Consumer Service Bureau (CSB) is part of the Consumer Affairs Division and handles daily consumer inquiries. CSB receives over 300 calls each day. Almost 50% of those calls result in the mailing of a complaint form to the consumer. Depending on the nature of the returned complaint, it is then referred to policy services, investigation or CSB.

Since 1979, the Department has maintained the Bureau of Fraudulent Claims, charged with investigation of suspected fraud by claimants. The California insurance industry claims losses of more than \$100 million annually to such claims. Licensees pay an annual fee of \$150 to fund the Bureau's activities.

In April 1986, the Department announced the creation of the Consumer Advisory Board to advise the Department on matters of importance to California insurance consumers. The Board was created as a compromise after intense legislative pressure to create such a body through statute. The Commissioner recently disbanded the original panel and is in the process of appointing a new seven-member panel which will permanently advise the Department.

MAJOR PROJECTS:

California Automobile Assigned Risk Plan. In November, the Commissioner announced the appointments of three new members to the Governing Council of the California Automobile Assigned Risk Plan (CAARP). CAARP is the insurance industry's shared-market auto insurance plan for drivers who have difficulty securing auto insurance. The

Department of Insurance oversees its operations and sets its rates. The Governing Committee administers the state plan for the shared-market auto insurance program. The new members include Sarah M. Flores, Joyce A. Bichlmeier, and Herbert Jones, all of Los Angeles. Ms. Flores, who was appointed as a consumer representative, has worked for the County of Los Angeles for 31 years, and since 1980 has served as the Assistant Chief Deputy for County Supervisor Peter F. Schabarum. Ms. Bichlmeier is an insurance industry representative, and has worked in her own insurance agency for 26 years. Mr. Jones, also an insurance industry representative, has been a broker since 1973.

Also in November, the Commissioner ruled that the CAARP is entitled to a rate increase for private passenger auto premiums. The overall rate increase is 18.5% on a statewide level. The increases became effective on December 15, 1987 for new policies, and on January 15, 1988 for renewals. CAARP had requested a 25% rate increase. In approving a portion of the requested increase, the Commissioner stated that she will not consider additional requests for increases for at least twelve months.

CAARP's rates have become of particular interest to consumers since the California Supreme Court upheld the Robbins-McAlister Financial Responsibility Act of 1984 in *King v. Meese*, 43 Cal.3d 1217, 240 Cal.Rptr. 829, 743 P.2d 889 (October 26, 1987) (for a more detailed discussion of the case, see *infra* LITIGATION). The Act requires proof of financial responsibility by a motorist involved in a moving traffic violation. This virtually requires insurance of every motorist in the state. For many motorists, the CAARP is the only available source of insurance, because they cannot obtain auto insurance by any other means.

Medigap Insurance. The Commissioner has issued a bulletin advising insurers of enforcement procedures under AB 213 (Calderon). (See CRLR Vol. 7, No. 4 (Fall 1987) p. 78 for background information.) The bulletin outlines penalties against insurers and agents who fail to comply with the law, which range from subjecting the insurer's certificate of authority to suspension or revocation, to fines of up to \$30,000. Questions regarding this bulletin may be directed to Jerry L. Whitfield, Special Deputy Insurance Commissioner, at (415) 557-3908. (For further information on Medigap insurance, see CRLR Vol. 7, No. 4 (Fall 1987) p. 1.)



Child Care Liability Insurance Hearings. On November 9, the Department conducted a hearing to determine the availability of child care liability insurance in California. The hearing was intended to help the Commissioner assess whether there is a need to form a joint underwriting association (JUA) for child care. Present at the hearing were representatives from a variety of consumer organizations and child care providers, along with a handful of insurance industry representatives. Consumer representatives testified that insurance remains difficult to find; policies are not comprehensive; and premiums continue to increase. Insurance industry representatives testified that policies are available and premiums are justified. When questioned as to the competitive nature of the current market, insurance industry representatives named several companies which compete for any portion of this business. The Commissioner will now make a determination as to the need for a child care JUA. (For additional information, see CRLR Vol. 7, No. 4 (Fall 1987) p. 77.)

DOI Orders Three Companies to Cease Business in California. The Department has ordered three companies to cease from transacting business in California, including Centaur Insurance Company of Illinois, American Mutual Reinsurance Company of Illinois, and Vehicle Protection Savings Plan Corporation of Michigan. The first two companies were charged with conducting their business in a hazardous manner which may lead to insolvency. The Michigan company was conducting a mail order business selling auto service contracts in California without a license. The cease and desist order against this company is permanent. Public hearings were held in November and December to review the charges.

Consumer Advisory Board. The first DOI Consumer Advisory Board (CAB) was appointed in April 1986. (See CRLR Vol. 6, No. 3 (Summer 1986) pp. 52-53.) In 1987, the Commissioner first suspended and then disbanded the panel (see CRLR Vol. 7, No. 4 (Fall 1987) p. 77), later announcing that she would name a new panel in January 1988. She intends to name a majority of consumer members to the panel, which will serve as a standing body to advise the Department. The panel will meet at least quarterly.

Some of the Department's most vocal critics were appointed to the original CAB by the Commissioner. She has stated that she will not reappoint at least one of these members, Steven Miller of Insurance Consumers Action Net-

work (ICAN), stating that Mr. Miller is a lobbyist and that, in her view, the panel is not to be a lobbying effort. Mr. Miller denies being a lobbyist, and says he is not required to register as one.

Recent Publications. Medicare Supplement Insurance for Californians is a buyer's guide designed to help senior citizens decide what type of health insurance coverage they may need to supplement federal Medicare benefits. The publication includes a general introduction explaining the coverage, followed by a company-by-company review of specific provisions of coverage and premiums.

Consumers Guide to Life Insurance. This brochure contains information on the types of life insurance and the appropriate level of coverage. It includes a glossary of life insurance terms, tips on finding low-cost policies, and information on filing complaints.

Homeowners Insurance Premium Survey compares annual rates for twenty of the largest companies offering the majority of all homeowners insurance policies issued in the state. It includes a comprehensive table explaining the discounts and options offered by various insurers.

Guide on Cancellations, Non-Renewals, and Premium Misquotes. This brochure, entitled "What Are Your Rights," gives consumers information in a question-and-answer format. It includes a guide as to information which may and may not be collected in a company's investigative report, and discusses the rights of consumers when premiums are increased or policies are cancelled.

These publications may be obtained for free at a Department office, or by writing to the Department at 600 S. Commonwealth Avenue, Los Angeles, California 90005.

LEGISLATION:

1988 DOI-Sponsored Bills. The Department's 1988 legislative proposals are currently being reviewed by the Governor's office. They will not be publicly released until approved by the Governor.

Insurance Initiatives. Although the initiative process is separate from the legislative process, in practice proposed initiatives can significantly impact legislative proposals and discussions. As of CRLR's printing deadline, at least six initiatives are being considered by a variety of consumer and special interest groups. Following is a summary of California initiative efforts either already filed or soon to be filed in California.

Once these initiatives are submitted to the Secretary of State, petitions may be circulated in an attempt to gather 372,178 signatures of registered voters needed for each. These signatures must be verified and submitted by a date 150 days before the November election. If sufficient signatures are gathered and verified, the initiative then goes on the ballot.

Insurance Rate Reduction and Reform Act. This measure includes a freeze on rates at 1987 levels with a rollback of 15-20% from those levels to account for inflation in 1987 rates over the previous years. Every subsequent rate increase would require approval of the Commissioner. Insurance companies would no longer be allowed to set automobile insurance rates based on zip codes, but would have to base their rates on an applicant's driving record and other relevant factors in determining risk. The measure would repeal the insurance industry's exemption from antitrust laws, and would provide for an elected Insurance Commissioner. This initiative is sponsored by the Access to Justice Foundation.

California Auto Accident Reimbursement Bureau. This initiative would establish a state-run auto insurance plan which would sell the state-mandated minimum liability insurance through the annual automobile registration process. The base price for coverage would be approximately \$300. Automobile insurance rates would also be regulated. This measure would also repeal the insurance industry's exemption from antitrust laws. It is sponsored by Consumers Union, the Center for Public Interest Law, the League of Latin American Citizens, the Urban League, and Public Advocates, Inc.

Burton Initiative. This initiative would end territorial ratesetting for automobile insurance and sex-differentiated rating for life insurance. It would also require state approval of all insurance rate increases, with all rates frozen at current levels until 1989, pending approval of new increases. This measure, which would also create a consumer advocate position within the Department of Insurance, is being sponsored by Los Angeles activist Edam Burton, with the support of Los Angeles Mayor Tom Bradley and state Senator Diane Watson.

Insurance Industry No-Fault Automobile Insurance. This measure would ban most lawsuits arising from automobile accidents, except those involving injuries both "serious and permanent" and those against drunk drivers. It would freeze rates for two years; require an



average 20% rollback in premiums on current policies; and limit attorneys' contingency fees. The measure, which would make null and void any other insurance initiative which passes with less votes than this initiative receives, is sponsored by the insurance industry.

Trial Lawyers' Initiative for "Good Drivers". This measure, which would mandate a 25% premium reduction for people designated as good drivers, is sponsored by the California Trial Lawyers Association.

Polanco Initiative. This initiative would cut in half premiums on the liability portion of auto insurance. It would also restrict pain and suffering damages. Assemblymember Polanco is sponsoring this measure.

AB 1080 (Moore), AB 1201 (Cortese), AB 1711 (Katz), AB 2600 (Brown), AB 2100 (Roos), AB 2333 (Johnston), AB 2339 (Johnston), AB 256 (Johnson), AB 2354 (Killea), AB 2297 (Killea), AB 2638 (Felando), SB 1102 (Seymour), AB 230 (Polanco), AB 232 (Lancaster), AB 243 (Lancaster), AB 355 (Eaves), and AB 356 (Eaves), all of which were previously reported in CRLR Vol. 7, No. 4 (Fall 1987) at pp. 77-78; Vol. 7, No. 3 (Summer 1987) at pp. 101-03; and Vol. 7, No. 2 (Spring 1987) pp. 77-78, have been dropped by their respective authors.

DEPARTMENT OF REAL ESTATE

Commissioner: James A. Edmonds
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The Real Estate Commissioner is appointed by the Governor and is the chief officer of the Department of Real Estate (DRE). The commissioner's principal duties include determining administrative policy and enforcing the Real Estate Law in a manner which achieves maximum protection for purchasers of real property and those persons dealing with a real estate licensee. The commissioner is assisted by the Real Estate Advisory Commission, which is comprised of six brokers and four public members who serve at the commissioner's pleasure. The Real Estate Advisory Commission must conduct at least four public meetings each year. The commissioner receives additional advice from specialized committees in areas of education and research, mortgage lending, subdivision and commercial and business brokerage. Various subcommittees also provide advisory input.

The Department primarily regulates two aspects of the real estate industry: licensees (185,878 salespersons, 89,548 brokers, 15,538 corporations) and subdivisions.

Licensee examinations require a fee of \$25 per salesperson and \$50 per broker. Exam passage rates average 45% for salespersons and 53% for brokers. License fees for salesperson and broker are \$120 and \$165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales or leases of certain subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the "public report." The report contains various disclosure statements relating to title, encumbrances and similar information. Recent legislation mandates that a purchaser be given the latest financial report for the project in addition to governing instruments and disclosure of any delinquent assessments. The commissioner will not issue the public report if the subdivider fails to comply with any provision of subdivision law.

The Department publishes three major publications. The *Real Estate Bulletin* is circulated quarterly as an educational service to all real estate licensees. It contains legislative and regulatory changes, commentaries and advice. In addition, it lists names of licensees against whom disciplinary action, such as license revocation or suspension, is pending. Funding for the *Bulletin* is supplied from a \$2 share of license renewal fees. The paper is mailed to valid license holders.

Two industry handbooks are published by the Department. *Real Estate Law* provides relevant portions of codes affecting real estate practice. The *Reference Book* is an overview of real estate licensing, examination, requirements and practice. Both books are frequently revised and supplemented as needed. Each book sells for \$10.

The California Association of Realtors (CAR), the industry's trade association, is the largest such organization in the state. Approximately 105,000 licensed agents are members. CAR is often the sponsor of legislation affecting the Department of Real Estate. The four public meetings required to be held by the Real Estate Advisory Commission are usually on the same day and in the same location as CAR meetings.

MAJOR PROJECTS:

Regulatory Changes. On November 16, the Office of Administrative Law

(OAL) approved the adoption of Article 18.6, sections 2920-2922, Title 10 of the California Administrative Code. The new regulations permit licensees to petition for a monetary penalty in lieu of a license suspension at any time after the filing of an accusation, and set the maximum penalty at \$250 per day of suspension stayed with a cap of \$10,000.

OAL also approved the amendment of numerous DRE regulations in Title 10, California Administrative Code, including changes to section 2792.17 regarding the notice and conduct of meetings of the members of common interest subdivision associations (the addition of a proxy voting provision); section 2792.22, regarding requirements that the governing body of a homeowners' association obtain and review certain financial reports; section 2792.23, regarding member and director access to the books and records of homeowners' associations; section 2806, to require sellers of out-of-state subdivision interests to provide specified documents to prospective buyers; section 2810.1, to repeal regulations applicable to timeshare projects; section 2812.8, regarding the employment contract of a managing agent for a timeshare project; section 2840, which amends the approved Mortgage Loan Disclosure Statement; section 2847.1 regarding submission of mortgage loan advertising to the DRE; section 2912, regarding criteria for rehabilitation of licensees disciplined because of conviction of a crime; sections 3000-3004, regarding DRE approval of equivalent courses of study at private vocational schools; and section 3101, regarding the application required for payment from the Real Estate Recovery Account.

Budget and Fiscal Report. At the October 9 Advisory Commission meeting in San Diego, Chief Deputy Commissioner John Liberator reported that the DRE had received a total of \$18.6 million during the first eleven months of the 1986-87 fiscal year (fiscal data for the full year was not yet available). This represented a decrease of 21% from the same time period last fiscal year. The decrease in revenue was primarily attributed to a decline in real estate license examinations. This decrease in examinations was directly attributed to the imposition of SB 1042 (Chapter 66, Statutes of 1984) educational licensure prerequisites which became effective January 1, 1986, and the large influx of examination applications which were submitted in the latter part of 1985 by those applicants wishing to avoid the SB 1042 requirements.